

October 19, 2004

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: CS Docket No. 97-80

Dear Ms. Dortch:

On Tuesday, October 19, 2004, William Check and Andy Scott of the National Cable & Telecommunications Association ("NCTA"), Paul Glist of the law firm of Cole, Raywid and Braverman, and I met with Rich Chessen, Steven Broeckaert and Natalie Roisman of the Media Bureau staff. During the meeting, we discussed why the July, 2006 ban on cable operator deployment of integrated set-top boxes should be eliminated.

The discussion reflected the arguments previously made by NCTA and others in written submissions in the above-referenced docket. In particular, we explained that the FCC's adoption of rules requiring support for CableCARD-enabled devices and the cable industry's implementation of the 2002 MSO-CE manufacturer agreement on "Plug and Play" DTV products have fundamentally changed the basis for the ban on integrated set-top boxes. The ban would limit consumer choice and impose a tax on cable customers, who will have to pay more for equipment that may not be best suited to meet their needs. Specifically we made the following points:

- The cable industry has made a firm commitment to facilitate new retail distribution channels and to support CableCARD-enabled devices, as exemplified by its implementation of the 2002 MSO-CE Manufacturer Agreement on "Plug and Play" DTV Products.

- As evidence of its commitment to retail availability, the cable industry has invested extraordinary energy, time, and money in the success of CableCARD-supported digital television sets.
- The FCC Rules implementing the MSO-CE Agreement require digital cable systems to support CableCARD-enabled devices, obviating the need for the costly integration ban which arguably served that purpose.
- A ban on integrated set-top boxes would substantially increase equipment costs (and monthly lease prices) and reduce equipment options for consumers.
- The two-way MSO-CE negotiations are proceeding at a timely pace given the constraints imposed on them
- The Integration Ban may stymie the development of a low-cost digital set-top box and a prompt digital transition

A copy of an outline of our presentation which we passed out at the meeting is attached.

If you have any questions, please contact the undersigned.

Sincerely,

/s/ Neal M. Goldberg

Neal M. Goldberg

Attachment

cc: Rick Chesson
Steven Broeckart
Natalie Roisman

THE 2006 BAN ON INTEGRATED SET-TOP BOXES SHOULD BE ELIMINATED

The FCC's Adoption of Rules Requiring Support for CableCARD-Enabled Devices and the Cable Industry's Implementation of the 2002 MSO-CE Manufacturer Agreement on "Plug and Play" DTV Products Have Fundamentally Changed the Basis for the Ban on Integrated Set-Top Boxes. The Ban Would Limit Consumer Choice and Impose a Tax on Cable Customers, Who Will Have to Pay More for Equipment that May Not be Best Suited to Meet Their Needs. It Should be Eliminated.

I. THE CABLE INDUSTRY HAS MADE A FIRM COMMITMENT TO FACILITATE NEW RETAIL DISTRIBUTION CHANNELS AND TO SUPPORT CABLECARD-ENABLED DEVICES, AS EXEMPLIFIED BY ITS IMPLEMENTATION OF THE 2002 MSO-CE MANUFACTURER AGREEMENT ON "PLUG AND PLAY" DTV PRODUCTS.

- The MSO-CE Agreement ("MOU") and the cable industry's commitment to making the Agreement work eliminate any doubt as to cable's commitment to a retail market and to new suppliers of set-top boxes.
- MSOs must make these CableCARD-enabled "plug and play" DTV products work with their systems or face the wrath – and defection – of their own customers.
- The MSO-CE Agreement will result in a wide variety of CableCARD-enabled products (e.g., DTVs and other multifunction CE devices) that manufacturers believe are viable at retail because the CableCARD interface functionality is a small fraction of total product cost. This is a market-based means for promoting retail availability, far superior to efforts to reshape cable rate regulations or MSO purchase orders.
- CE manufacturers have to date developed "plug and play" DTVs and DVRs (i.e., those with set-top box functionality) for retail, but have not developed CableCARD-enabled set-top boxes. However, some CE manufacturers have been working with MSOs in developing integrated set-top boxes for purchase by cable operators to lease to customers, thereby further enhancing competition and consumer choice. Just recently, Comcast and Panasonic announced an agreement under which Panasonic will provide Comcast with a significant number of OCAP-enabled integrated set-top boxes. (Panasonic also announced it will offer other OCAP-enabled devices at retail.) Retaining the ban and thereby mandating the provision solely of CableCARD-Host combinations in lieu of integrated set-top boxes will only increase the costs to those would-be cost-cutting new entrants.
- Cable operators have strong independent reasons to promote retail availability of equipment. In particular, cable operators' core business is the sale of services, not the sale or lease of set-top boxes or other cable customer equipment. Because cable operators face vigorous competition from DBS and others, they have every incentive to maximize the equipment options for cable customers to receive their services, especially at retail.
- The costly integration ban was adopted to require support for CableCARDs. But it was designed before the "plug and play" agreement was negotiated and adopted. The FCC Rules implementing the MSO-CE Agreement require digital cable systems to support CableCARD-enabled devices, obviating the need for the integration ban.

II. AS EVIDENCE OF ITS COMMITMENT TO RETAIL AVAILABILITY, THE CABLE INDUSTRY HAS INVESTED EXTRAORDINARY ENERGY, TIME, AND MONEY IN THE SUCCESS OF CABLECARD-SUPPORTED DIGITAL TELEVISION SETS.

- More than 100 new DTV models from 11 different independent manufacturers now have been certified, verified or self-verified for compliance with the unidirectional digital cable product test suite for “digital cable ready” (“DCR”) televisions. These major manufacturers include Hitachi, LG Electronics (Zenith), Mitsubishi, Panasonic, Philips, Pioneer, Samsung, Sharp, Sony, Thomson, and Toshiba. These UDCPs would not have made it to market without extraordinary cooperation by cable operators and the cable industry.
- CableLabs made extraordinary efforts to meet CE manufacturers’ insistence on speed: it created short cuts throughout the testing process; cut back on interoperability tests CE claimed were unnecessary; changed the handling of security certificates to allow faster development and manufacturing; paid for the invention of a new test tool for efficiently testing CableCARD-Host binding during the development process; allowed manufacturers to substitute their in-house testing plans for the CableLabs joint test suite to which they had previously agreed; rescheduled test waves to suit manufacturers’ development and “time to market” schedules; provided weekly updates on how CE devices were testing out so that CE engineers could redesign at the same time the devices were in testing; provided free development labs time; provided formal testing at cost; provided internal “appeals” processes to minimize the need for re-testing; granted CableLabs verification *before* FCC approval or Underwriter’s Lab certification; allowed manufacturers to change the product after testing and substitute the modified “production” model for the model tested; and then allowed self-certification of all subsequent DTVs. This process proceeded on an extraordinarily fast schedule, with scores of concessions to CE to meet their demands for speed, at considerable personal sacrifice by engineers, technicians, and business executives at MSOs and at CableLabs.
- The cable industry had agreed in the MOU to assist CE manufacturers in creating their own headends for development and testing, but many did not wish to spend the money. At the urging of CE manufacturers, MSOs therefore provided additional testing in MSOs’ own labs, even though not required by the MOU or any other agreement. Cox, Charter, Time Warner Cable, and Comcast all provided extensive support in their labs and at their headends. They ran interoperability tests, they tested for installation and provisioning; they tested CableCARD-Host authentication and the ability of the device to read CCI/Copy Protection signaling and EAS; they tested the devices’ ability to read channel maps and source name table and PSIP; they tested the devices’ responsiveness to CableCARD firmware upgrades; they tested performance in analog, standard definition digital, HD digital, 64 QAM, and 256 QAM.
- In addition to the efforts by CableLabs to “verify” UDCPs under these abbreviated procedures, MSOs have made further efforts to support the devices. Hundreds of headends were adjusted and updated to transmit the approved FCC copy control signals and to meet the SCTE standards called for in FCC rules. HD set-tops with 1394 outputs were made available on schedule by April 1, 2004, so that requesting customers could record compressed digital programming over 1394 connectors.

Thousands of Customer Service Representatives and Field Technicians were trained to support the ever growing number of UDCPs—all of which had their own unique set-up menus, connectors, remote controls, and deficiencies.

- Armies of engineering personnel, from field technicians to corporate engineers, spent their time troubleshooting and fixing UDCPs as they appeared in consumer homes. “Troubleshooting” conference calls between MSOs and CE technicians—although not required under any agreement or order—were created and then moved from bi-weekly to weekly calls.

III. A BAN ON INTEGRATED SET-TOP BOXES WOULD SUBSTANTIALLY INCREASE EQUIPMENT COSTS (AND MONTHLY LEASE PRICES) AND REDUCE EQUIPMENT OPTIONS FOR CONSUMERS.

- As Chairman Powell observed in dissenting to the 2005 prohibition, it “is contrary to good public policy to remove from the market a potentially cost-effective choice for consumers.” Yet, this is precisely what the ban would do.
- Even in deferring to the FCC’s prior decision, the D.C. Circuit suggested that “consumers might have chosen not to purchase retail devices for perfectly sensible economic reasons – because, for instance, there are efficiency gains captured in the manufacture of an integrated box that lead it to cost less” and that “the integration ban does nothing more than deny the most cost-effective product choice to consumers – an ironic outcome for an order implementing ‘one of the most pro-consumer, pro-competitive provisions of the Telecom Act.’”
- The 2002 House Telecommunications Subcommittee’s DTV Transition staff discussion draft made this same point in proposing elimination of the integration ban. As Chairman Tauzin recognized in his opening statement during the hearing on the discussion draft: “[i]ntegrated boxes may very well be more convenient and less expensive for consumers – at the very least, there is another choice for consumers.”
- There is ample record evidence showing the potential cost advantages and other benefits that integrated set-top boxes offer to customers. NCTA has submitted evidence showing that a CableCARD-Host combination would cost a cable operator approximately \$72 to \$93 more than an integrated set-top box performing the same functions. This translates into an average consumer price increase of between approximately \$2.00 to \$3.00 per month for each leased CableCARD-Host combination (i.e., the CableCARD plus the CableCARD interface in the Host) (assuming both the CableCARD and Host are rate regulated), based on a five-year and three-year depreciable life, respectively.
- Even using the cost figures alleged by retailers in their own ex parte filings – which NCTA continues to believe substantially understate the added costs associated with a CableCARD-Host combination – implementation of the ban on integrated set-top boxes would impose hundreds of millions of dollars in unnecessary additional equipment costs on consumers. These added costs would be borne by consumers with no corresponding public interest benefit. There is no need to impose this tax when cable operators are already supporting CableCARDs.
- Indeed, the ban would force cable subscribers to bear these added costs even though the enhanced portability of such Host devices provides no added value for

consumers who prefer to lease, rather than purchase, their set-top boxes, because those boxes stay within one operator's cable system.

- The best public policy is to ensure that consumers can choose the equipment option that best fits their preferences. While some consumers may prefer the particular features in an integrated set-top box, which might be offered by a cable operator or a retailer, others may prefer the different features offered in a CableCARD-Host combination. As Chairman Powell has observed, the ban on integrated set-top boxes forces cable operators to make procurement and technology decisions “so as to avoid the potential for stranded investment, not on the basis of what might be best for their customers.” By contrast, if the ban is eliminated, cable equipment investments and consumer equipment prices will (as they should) be driven by consumer choice and competition.

IV. THE TWO-WAY MSO-CE NEGOTIATIONS ARE PROCEEDING AT A TIMELY PACE GIVEN THE CONSTRAINTS IMPOSED ON THEM.

- Two-way talks have been going on continuously since the 2002 one-way agreement was signed and progress has been made in narrowing issues.
- Cable MSOs and CE manufacturer representatives have met separately to advance industry-to-industry ideas. There have been over 30 face-to-face meetings to narrow topics and reconcile differences in approaches.
- At the FCC's urging, all potentially affected parties have participated in large group discussions. At the first such meeting, twelve CE manufacturers, CEA, seven studios, MPAA, four group owners of programming, six prominent IT/PC companies, DirecTV and EchoStar, NAB, and MSTV attended. Large-group meetings have been held in Washington (3), Chicago, and Los Angeles to accommodate non-CE, non-cable parties. These large meetings attract 80-90 attendees.
- The size and scope of these meetings, and the presence of cross-industry competitors when issues touch on proprietary matters, understandably have affected the speed with which issues may be discussed and resolved.
- If the integration ban were to remain in place, it could impede continuing MSO-CE discussions regarding standards for two-way products, because it will divert MSO and vendor attention away from the negotiations.

V. THE INTEGRATION BAN MAY STYMIE THE DEVELOPMENT OF A LOW-COST DIGITAL SET-TOP BOX AND A PROMPT DIGITAL TRANSITION.

- Inexpensive digital set-top boxes – which will permit the viewing of digital programming on analog TV sets – will facilitate the end of the digital transition since, under the Commission's tentative conclusion, customers need such devices to be counted in meeting the “85% test.” Key Members of Congress agree.
- The cable industry is intent on developing and deploying such low-cost digital set-top boxes. However, if the costs of a CableCARD slot and the accompanying CableCARD are added, the integration ban will stymie the goal of the elusive “\$35 - \$50” digital set-top box, thereby impairing the DTV transition.

- Allowing deployment of such operator-supplied devices does not lessen cable's commitment to making plug and play devices work. Cable needs a retail presence to compete with DBS and other competitors.
 - This is why the cable industry developed OCAP to support the nationwide portability of applications, such as program guides, on retail navigation devices.
 - This is why the cable industry has moved into active participation and leadership in the inter-industry forums setting standards for "Universal Plug and Play" home networking, which will allow various suppliers of retail consumer-electronics, personal computer, and mobile devices to be networked together inside the home and be able to communicate with one another and share their resources.
 - This is also why, as the cable industry started to develop goals and requirements for next-generation security, it consulted not just with traditional cable operator suppliers, but also with consumer electronics manufacturers who sell at retail. It was designed that way so that CE manufacturers and retail distributors can be full participants.